

Western Area Planning Committee

17 June 2020

Agenda Item Supplement – Extract’s Officer’s Report and Inspector’s Report

Paragraphs 13 – 14 of the Officers Report

Main Considerations for the Council

13. It should be noted that prior to the resumed inquiry on 4 December 2019, the CRA received a joint request from Counsel acting for both the applicants and the objectors, to adjourn the inquiry to a date not before the beginning of March 2020, in order to allow the parties time to continue ongoing discussions and complete the details of an agreement where the parties had, in principle, agreed that the town/village green application would be withdrawn in exchange for the dedication of a footpath around the perimeter of the site. The DEFRA advice - “Section 15 of the Commons Act 2006 – Guidance notes for the completion of an application for the registration of land as a town or village green outside the pioneer implementation areas” October 2013, states:

“61. ...If you decide at any stage not to proceed with your application, the registration authority has discretion either to take no further action on your application, or to go ahead and determine the application you made, based on the available evidence.”

14. This request was considered by both the CRA on receipt and by the Inspector at the inquiry and commented upon within the Inspector’s report (Appendix D). Where it is at the discretion of the Registration Authority, it was concluded that the inquiry should continue and the application be determined where there was a wider public interest and due to the difficulties that a six month adjournment would cause to the Inspector being obliged to make findings on the earlier evidence.

Extract from paragraphs 52 to 58 of the Inspector’s Report

Application to adjourn

52. Shortly before the start of the resumed hearing on 4 December 2019 (Day 4) the CRA received an agreed joint note dated 27 November 2019 from counsel acting for As and Os (to be found at the end of the supplemental CRA bundle) in which the CRA was invited to adjourn the public inquiry to a date ‘not before the beginning of March 2020’. The note invited the CRA to make an urgent decision in order that the parties might know whether their attendance was required at the resumed hearing on 4-5 December 2020.

53. I was consulted about this by the CRA and it was my recommendation that an adjournment of the public inquiry should not be permitted on public interest grounds and a reasoned letter was sent both parties on 29 November 2019 notifying them of WC’s decision. The parties were also informed that if they wished to renew their joint application to adjourn they could so at the resumed inquiry which was then less than a week away and where all necessary arrangements had been made and publicised in advance.

54. The reason given for the requested adjournment was that the parties had reached agreement in principle that the application would be withdrawn in exchange for (amongst other things, about which I was given no details) for a

dedication of a footpath around the perimeter of the land. It was suggested that an adjournment would give the parties time to work out the details of the suggested agreement (which, it is said, they expected to reach) and that to continue the inquiry might frustrate the ability of the parties to secure an amicable settlement. It also seemed to me that the Rights of Way team at WC would need to be brought into these negotiations in order to see whether they were minded to support any proposal by the landowner to dedicate land as a public right of way in view of their powers under the Highways Act 1980.

55. The CRA has a discretion whether to allow an adjournment in much the same way as it has a discretion to allow an application to be withdrawn before it has been determined. Where it would be reasonable to allow an application to be withdrawn the discretion will no doubt be exercised in favour of the withdrawal. Much will depend on the context which might include the prospects of the application succeeding in law and the measure of support which it enjoyed within the local community. In this case we were about to begin day four of what proved to be a five day inquiry in what is a well supported application. In such circumstances (unlike in private law litigation) there is, as it seems to me, an obvious legitimate public interest in the application being determined in order that the status of the land might be determined rather than being left in a state of limbo.

56. The inquiry was told that As had contacted 'a number of people' who had submitted completed evidence questionnaires and that there had been a meeting which approved the application for an adjournment. There was no suggestion that everyone, or at least an overwhelming majority of those who had lodged written evidence, had signified their consent to the proposed adjournment although a number of them clearly had.

57. I invited submissions on the application to adjourn at the start of Day 4 and the matter was also discussed privately by myself with officers of WC who attended the hearing. It was my recommendation that the application should be rejected and that the inquiry should continue (which it did) which was the unanimous view of these officers which I later communicated to the parties in open session. In my remarks I noted (a) that there was a wider public interest in seeing the application through to a conclusion now that we were part way through the inquiry (and by that stage 12 witnesses supporting the application had already given oral evidence); (b) that the CRA had not been presented with evidence that the overwhelming majority of those who supported the application to register had agreed to the proposal to adjourn; and (c) that by adjourning the inquiry to March or even April 2020, whenever it could be refixed to suit the convenience of the parties and their witnesses, it would mean that there would potentially be a gap of around 6 months before the inquiry resumed which made it extremely difficult for the Inspector who was obliged to make findings on the earlier evidence.

58. It is my view that the application to adjourn was, in the exercise of their undoubted discretion in the matter, rightly rejected by the CRA.